Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Van Lines, Inc.—Claim for Reimbursement of Amounts Collected by Setoff for Damage to Household Goods

File: B-257887

Date: April 27, 1995

DIGEST

1. Tender of an item to a carrier is established as an element of a prima facie case of carrier liability where the item allegedly lost or damaged is reasonably related to items shown on the inventory of a carton's contents, particularly where it would not have been unusual to pack the item in that carton, and the carrier did the packing and prepared the inventory list.

2. The General Accounting Office will not question an agency's calculation of the value of damages to items in a shipment of household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably.

DECISION

This is in response to an appeal of a Claims Group settlement which denied the claim of American Van Services, Inc., for reimbursement of amounts collected by setoff for damage to household goods. We affirm the Claims Group's settlement.

American picked up the household goods of Second Lieutenant Matthew K. Killoran, USAF, under Government Bill of Lading No. RP 246,407 at Tallahassee, Florida, on November 8, 1988, and delivered them to him at San Angelo, Texas, on December 2, 1988. A DD Form 1840R dated Jan. 3, 1989, was sent to American as notice of damage to the shipment. The Air Force collected $607.19 from American by setoff. Of that amount American claims reimbursement of $477.95. American denies liability, arguing that some of the damaged items were never tendered and that the Air Force failed to take preexisting damage into account for some items.

A prima facie case of carrier liability is established by a showing that the shipper tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages has been determined. The burden of

proof then shifts to the carrier to rebut the prima facie liability. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964).

In the present situation a prima facie case of carrier liability has been established, and American has presented no evidence which rebuts its liability.

American argues that many of the individual damaged items packed in boxes were not tendered because they do not appear on the inventory for the shipment. Tender is primarily an issue when goods are missing rather than damaged, particularly in a situation such as this one where the driver was aware of damage to a number of items at delivery. We have said that the carrier is not relieved of liability for loss of or damage to household goods simply because the items are not listed on the inventory, particularly when it would not have been unusual for those items to be packed in the specific boxes they were in and the carrier packed the boxes and prepared the inventory. See American Van Services, Inc., B-249966, Mar. 4, 1993. Several of the items were kitchen items, and it would not have been unusual for them to have been packed with other kitchen items--e.g., a skillet with dishes, a cake server with food, and a lunchbox with a clay baker. Several other items packed with clothing could easily have been on a shelf in the closet and have been packed among the clothes for convenience.

American also argues that there was preexisting damage to a number of items including a dry sink. While the inventory lists some preexisting damage to the dry sink, the DD Form 1840R lists damage of a different kind--"drawer knob bent into wood." American is liable for damage other than that noted on the inventory. See Ambassador Van Lines, Inc., B-249072, Oct. 30, 1992. Furthermore, the Air Force reduced the repair claim by 75 percent for preexisting damage.

American has no evidence to support its claims of preexisting damage to other items, and its other arguments pertain primarily to the Air Force's computation of damages. As a general rule, this Office will not question an agency's calculation of the value of damage to household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably. See B-249072, supra. American has presented no such evidence.

Accordingly, American's claim is denied.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel